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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,936	04/14/2004	Vahid Saadat	USGINZ00700	7289

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LEVINE BAGADE HAN LLP  
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PALO ALTO, CA 94303

EXAMINER
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KASZTEJNA, MATTHEW JOHN

ART UNIT	PAPER NUMBER
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3739

MAIL DATE	DELIVERY MODE
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01/15/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/824,936	Applicant(s) SAADAT ET AL.	
	Examiner Matthew J. Kasztejna	Art Unit 3739	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 October 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9, 16-19, 23, 24, 26, 27, 29-34, 36-38 and 40-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 16-19, 23, 24, 26, 27, 29-34, 36-38 and 40-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some    \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 24, 2007 has been entered.

### ***Notice of Amendment***

In response to the amendment filed on October 24, 2007, amended claims 1, 3, 16-17, 24 and 31 and canceled claim 35 are acknowledged. The current rejections of the claims are *withdrawn*. The following new grounds of rejection are set forth:

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-9, 16-19, 23-24, 26-27, 29-34, 36-38 and 40-43 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. 2005/0096502 to Khalili.

**In regards to claim 1**, Khalili discloses an apparatus for obtaining endoluminal access, the apparatus comprising: a flexible elongate body 4 having a working axis and a distal region 18, the elongate body configured for insertion within a body lumen (see paragraphs 0045 and 0057); at least two working lumens 12, 14, 16 extending through the flexible elongate body; at least one articulating element 38 disposed near or at the distal region of the elongate body and pivotally connected to the elongate body near or at its distal region by at least one linkage member 36, 34 and at least one hinge 30, 28, wherein the articulating element is configured to articulate from an in-line position to an off-axis position relative to the working axis of the elongate body (see Figs. 1a-d and paragraphs 0009-0012). **In regard to claim 31**, Khalili discloses a method of passing a diagnostic or therapeutic tool through a working lumen provided in the elongate body (see Fig. 5 and paragraphs 0050 and 0063-0064)

**In regards to claims 2 and 32**, Khalili discloses an apparatus for obtaining endoluminal access, wherein the articulating element comprises a visualization element 110 configured to image within a body lumen (see Fig. 7a and paragraph 0066).

**In regards to claim 3**, Khalili discloses an apparatus for obtaining endoluminal access, wherein the articulating element comprises the distal region of a working lumen extending through the elongate body (see Figs. 1a-d and paragraph 0050).

**In regards to claims 4 and 37**, Khalili discloses an apparatus for obtaining endoluminal access, wherein the apparatus has a delivery configuration in which the articulating element is aligned with or adjacent to the working axis of the elongate body,

and a deployed configuration wherein the articulating element is articulated off-axis from the working axis of the elongate body (see Figs. 1a-d and paragraphs 0009-0016).

**In regards to claim 5**, Khalili discloses an apparatus for obtaining endoluminal access, wherein the articulating element further comprises at least two articulating elements (see Fig. 1c and paragraph 0065).

**In regards to claims 6-7**, Khalili discloses an apparatus for obtaining endoluminal access, wherein the at least two articulating elements are configured for independent off-axis articulation or coordinated off-axis articulation (see paragraphs 0050 and 0054).

**In regards to claims 8-9, 33 and 41**, Khalili discloses an apparatus for obtaining endoluminal access, wherein the at least two articulating elements comprise at least two visualization elements configured to provide stereoscopic visualization (see paragraph 0066).

**In regards to claims 16-17 and 34**, Khalili discloses an apparatus for obtaining endoluminal access, wherein off-axis articulation of the articulating element is configured to expose a distal opening of the working lumen (see Fig. 1b).

**In regards to claims 18, 38 and 40**, Khalili discloses an apparatus for obtaining endoluminal access, wherein the distal opening is covered by the articulating element in the deliver configuration as the articulating element is capable multiple degrees of freedom, thus allowing manipulation of the element in and out of line with the working axis as desired (see Figs. 1a, 8 and paragraphs 0013, 0071).

**In regards to claim 19**, Khalili discloses an apparatus for obtaining endoluminal access, further comprising a visualization element and wherein off-axis articulation of the articulating element is configured to expose the visualization element (see Figs. 1a-d and 8).

**In regards to claim 23**, Khalili discloses an apparatus for obtaining endoluminal access further comprising a housing configured to couple the articulating element to the elongate body and to facilitate articulation of the articulating element (see Figs. 3).

**In regards to claim 24**, Khalili discloses an apparatus for obtaining endoluminal access, wherein the articulating element is supported on the body by a pair of pivoting links (see Figs. 8 and 9a-b).

**In regards to claims 26-27 and 42-43**, Khalili on discloses an apparatus for obtaining endoluminal access, wherein the elongate body is steerable and may be rigidizable (see paragraphs 0009-0016, 0044-0045, 0048 and 0084-0087).

**In regards to claim 29**, Khalili discloses an apparatus for obtaining endoluminal access, wherein the articulating element further comprises a diagnostic tool (see paragraph 0046 and 0066).

**In regards to claim 30**, Khalili discloses an apparatus for obtaining endoluminal access, further comprising an atraumatic tip 60 (see paragraph 0057).

**In regards to claim 36**, Khalili discloses a method for obtaining endoluminal access, further comprising injecting or withdrawing fluid through the working lumen (see paragraph 0068).

***Response to Arguments***

Applicant's arguments with respect to claims 1-9, 16-19, 23-24, 26-27, 29-34, 36-38 and 40-43 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Kasztejna whose telephone number is (571) 272-6086. The examiner can normally be reached on Mon-Fri, 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJK 

12/17/07



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